

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 18659 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- Whether Reporters of Local Papers
1 may be allowed to see the
judgment ?
2 To be referred to the Reporter or
not ?
3 Whether their Lordships wish to see
the fair copy of the judgment ?
Whether this case involves a
substantial question of law as to
4 the interpretation of the
constitution of India, 1950 or any
order made thereunder ?
5 Whether it is to be circulated to
the civil judge ?

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SNEHI MANDAL CO-OPERATIVE HOUSING SOCIETY LIMITED
- Petitioner(s)

Versus

GENERAL MANAGER-WESTERN RAILWAYS & 2 -
Respondent(s)

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Appearance :

MR AJAY R MEHTA for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.
MRS SHILPA R SHAH for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 29/11/2005

CAV JUDGMENT

1. In this petition petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Chief Executive Engineer (Western Region), Ratlam dtd.2/9/2005 in Eviction Application NO.43 of 2002. The petitioner has also prayed for to quash the proceedings of Eviction Application No.43 of 2002.

2. It is the case on behalf of the petitioner that the petitioner society purchased the property bearing Revenue Survey No.270/A/1 by registered sale deed dtd.13/6/1945. It is also the case of the petitioner that since the road was proposed to pass from the Western side of the land in question, the said sale deed in favour of the petitioner was made for a total area admeasuring 23 Gunthas (2323 sq.mtrs.). To the

north of the land, there is a Railway Track running from Mumbai to Delhi, which was a Single Line at the relevant time and since the railway authorities wanted to convert the said railway track into dual line, second line was proposed to be lead for which acquisition proceedings were initiated by the railway authorities somewhere in the year 1958 which culminated into an Award for the land which came to be acquired by the railway authorities. It is also the case of the petitioner that the respondent had acquired 6 Guthas (612 sq.mtrs.) of land from the petitioner from the land bearing Revenue Survey No.270/A/1. It is also the case on behalf of the petitioner that subsequently in the year 1977, Town Planning Scheme No.1 (Dahod Town) was finalised and the petitioner's land was given Final Plot No.59/1 ad-measuring 17 Gunthas (1711 sq.mtrs.) Thus, it is also the case of the petitioner that they are the owners and entitled to hold 17 Gunthas of land. It is the case on behalf of the petitioner

that on 23/7/2002, the railway authorities came on the site for the purpose of measuring their land and after measurement, they were of the opinion that 944.21 sq.mtrs. of land of Survey No.15/5 had been encroached upon by the petitioner and they were trying to lay the marks indicating the boundaries of their land, which according to the petitioner would virtually have taken away 2/3rd part of the land. Therefore, the petitioner preferred Regular Civil Suit No.209 of 2002 before the learned Civil Judge (SD), Godhara praying for permanent injunction against the respondent authorities and also for declaration that 17 Gunthas of land belongs to the petitioner. It appears that in the said suit, the petitioner also submitted an application for interim injunction at Ex.5 but before the application Ex.5 came to be heard, the railway authorities issued notice dtd.1/8/2002 calling upon the petitioner to remove the encroachment of 944.21 sq.mtrs. It is also the case of th

petitioner that the respondent thereafter issued one another notice dtd.12/9/2002 claiming that the encroachment made by the petitioner was to the extent of 1244.51 sq.mtrs. It appears that initially the trial court granted the order of status-quo till the filing of the Written Statement. However, thereafter, vide order dtd.17/9/2003, the application Ex.5 came to be allowed and the respondents authorities were restrained from disturbing the possession of the petitioner, ad-measuring 1711 sq.mtrs. However, it is required to be noted that the trial court has passed an order that if it is found that the petitioner - original plaintiff has encroached upon the additional land of the ownership of the defendants of Revenue Survey No.270/A/1, they would be entitled to take the possession of the said land from the petitioner -original plaintiff by due process of law. It appears that in the meantime, notice dtd.28/8/2002 was issued by the railway authorities under the provisions of the

Public Premises (Eviction of Unauthorised Occupants) Act (hereinafter referred to as "the Act" for convenience) and the petitioner was directed to show cause as to why they should not be evicted from their land admeasuring 1244 sq.mtrs. It appears that the petitioner had raised the preliminary objection challenging the aforesaid notice contending inter-alia that the provisions of the Act would not have any application since the proceedings are pending before the Civil Court. The petitioner preferred Special Civil Application No.16130 of 2005 before this Court for declaring that the respondents have no authority to proceed further with the Case NO.43 of 2002 under the provisions of the Act. The aforesaid petition came to be disposed of by this Court (Coram : Akil Kureshi, J.) observing that it will be open for the petitioner to request the competent authority to decide the question of jurisdiction and thereafter, the respondent No.3 has passed the impugned order

holding that it has got the jurisdiction to proceed further with the proceedings under the Act and that even the same would be in consonance with the order passed by the trial court below application at Ex.5 in the aforesaid civil suit and accordingly rejected the application raising preliminary objection of jurisdiction raised by the petitioner. Feeling aggrieved and dissatisfied with the same, the petitioner has preferred the present petition under Article 226 of the Constitution of India.

3. Mr.Ajay Mehta, learned advocate appearing on behalf of the petitioner has vehemently submitted that the respondent No.3 has materially erred in holding that it has jurisdiction to proceed further with the said proceedings under the provisions of the Act. He has also further submitted that when the dispute with regard to the title of the land in question is pending before the Civil Court, the respondent NO.3 has

no jurisdiction to proceed further with the said proceedings under the Act as unless and until, the dispute with regard to the title is resolved by the competent Civil Court, it is not open to proceed further with the proceedings under the aforesaid Act. He has also further submitted that in view of the order passed by the trial court below application Ex.5 restraining the respondents from taking over the possession of 1700 sq.mtrs. of the land from the land of the petitioner, it is no open for the respondent No.3 to proceed further with the proceedings under the Act. It is also further submitted by him that the action of the respondent in proceeding with the matter despite the injunction granted by the trial court is not tenable and the respondent cannot proceed with the matter. It is also further submitted that the jurisdiction of the authority is limited to order eviction and it cannot decide the title or conclude as to whether a particular land is a public premises or

not. Consequently it is requested to allow the present petition and grant the reliefs as prayed for.

4. Per-contra, Ms.Shilpa Shah, learned advocate appearing on behalf of the respondents has submitted that it is not that the order passed by the trial court below application Ex.5 has become final, as against the said order, an appeal is preferred before the District Court which is pending. She has also further submitted that even otherwise in the order passed below application Ex.5 itself, liberty is reserved in favour of the respondent - railway authorities and it is so observed in the operative order that if it is found that the petitioner has encroached upon the additional land of the ownership of the defendants of Revenue Survey No.270/A/1, the defendant would be entitled to take possession of the said land from the plaintiff by due process of law and therefore, to ascertain how much

land the petitioner has encroached upon, the proceedings are required to be initiated and accordingly the proceedings are initiated under the Act and the same is neither illegal nor in conflict with the order passed by the trial court below application Ex.5, in any manner. Consequently, it is requested to dismiss the present petition.

5. Heard the learned advocates appearing on behalf of the parties. It is required to be noted that the trial court in the order passed below application Ex.5 in the suit filed by the petitioner, has observed as under;-

"If it is found that the plaintiff has encroached upon the additional land of the ownership of the defendants of Revenue Survey no.270/A/1, the defendants would be entitled to take the possession of the said land from the plaintiff by due process of law."

6. Thus, irrespective of the fact whether

against the order passed by the trial court below application Ex.5 in the suit filed by the plaintiff, whether any appeal is pending before the District Court or not, even as per the said order passed below application Ex.5, the trial court itself has observed that it will be open for the respondent to take the possession of the additional land of the ownership of the respondent of Revenue Survey No.270/A/1, if it is found that the petitioner has encroached upon any land, after due process of law. The initiation of the proceedings under the provisions of the Act itself can be said to be taking the proceedings by due process of law and only on such inquiry and after completion of the proceedings, it can be decided that whether the petitioner has encroached upon any land belonging to the railway authorities from the land bearing Revenue Survey No.270/A/1 or not and if yes to what extent, the said land has been encroached upon by the petitioner. Under the

circumstances, the contention on behalf of the petitioner that the said proceedings under the Act are not maintainable and the same are required to be quashed and set aside, has no substance. It is also required to be noted that the said proceedings are as such in consonance with the order passed by the trial court below application Ex.5 and the same is not in any way in conflict with the aforesaid order passed below application Ex.5. However, it will be open for the petitioner to raise all the contentions on merits which are available to them in accordance with law before the respondent No.3 in the aforesaid proceedings and on the basis of the same and after adducing the evidence, the respondent No.3 is required to pass final order.

7. In view of the above and in view of the specific order passed by the learned trial court below application Ex.5 in the aforesaid civil suit filed by the petitioner reserving the

aforesaid liberty in favour of the respondents, if the application submitted by the petitioner raising the preliminary objection is rejected and it has been decided to proceed further with the proceedings under the act to ascertain with regard to the extent of encroachment if any, it cannot be said that the said order is in any way illegal, which requires interference at the hands of this Court in exercise of the powers under Article 226 of the Constitution of India.

8. Under the circumstances and for the reasons stated hereinabove, there is no substance in the present petition and the same is required to be dismissed and the same is accordingly dismissed. Notice is discharged. Ad-interim relief granted earlier stands vacated forthwith.

(M.R. SHAH, J.)

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